In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 361

W. J. SIMMS, WILLIAM S. ROSECRANS, EDWARD W. COST, ET AL., PETITIONERS

v.

COUNTY OF LOS ANGELES, A BODY CORPORATE AND POLITIC, AND CITIES OF GARDENA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

MEMORANDUM FOR THE UNITED STATES, AMICUS CURIAE, IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The federal question decided by the Supreme Court of California is substantial and important. The statutory provision involved is similar to those relating to many other federal agencies[1] and it

[1] Section 5219, Revised Statutes of the United States (12 U.S.C. 1946 ed., Sec. 548), provides, in pertinent part, that "Nothing herein shall be construed to exempt the real property of [national bank] associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed." This provision stems

is not unlikely that the decision in this case will invite other state and local taxing authorities to follow the course taken by California.

In California alone, with which the present litigation is concerned, the Reconstruction Finance Corporation has a very large investment in plants, plant sites, machinery and equipment. We are advised by the Reconstruction Finance Corporation that it has, in the past, suffered discriminations much like those imposed by California on national bank property, and that its operations are being substantially increased because of the present international situation. As a result of the decision of the court below, the R.F.C. fears that it will be

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from the Act of June 3, 1864, c. 106, 13 Stat. 99, Sec. 41, which authorized the creation of national banking associations. Subsequent statutes submitting federally-owned real property to state and local taxation, including Section 10 of the Reconstruction Finance Corporation Act of January 22, 1932, c. 8, 47 Stat. 5, 9, as amended by Section 3 of the Act of June 10, 1941, c. 190, 55 Stat. 248 (15 U.S.C. 1946 ed., Sec. 610), seem to have been based upon the above clause in Section 5219, Revised Statutes of the United States. Among such statutes are the Federal Farm Loan Act, c. 245, 39 Stat. 360, Sec. 26 (12 U.S.C. 1946 ed., Secs. 931, 933) (1916); Agricultural Credits Act of 1923, c. 252, 42 Stat. 1454, Sec. 211 (12 U.S.C. 1946 ed., Sec. 1261) (1923); Federal Home Loan Bank Act, c. 522, 47 Stat. 725, Sec. 13 (12 U.S.C. 1946 ed., Sec. 1433) (1932); Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128, Sec. 4 (12 U.S.C. 1946 ed., Sec. 1463(c)) (1933); Banking Act of 1933, c. 89, 48 Stat. 162, Sec. 8 (12 U.S.C. 1946 ed., Sec. 264 (p)) (1933); Federal Farm Mortgage Corporation Act, c. 7, 48 Stat. 344, Sec. 12 (12 U.S.C. 1946 ed., Sec. 1020f) (1934); National Housing Act, c. 847, 48 Stat. 1246, Secs. 208, 307, 402 (12 U.S.C. 1946 ed., Secs. 1714, 1722, 1725(e)) (1934); Act of March 8, 1938, c. 44, 52 Stat. 107, Sec. 5 (15 U.S.C. 1946 ed., Sec. 713a-5) (1938); Act of March 28, 1941, c. 31, 55 Stat. 55, Sec. 1 (12 U.S.C. 1946 ed., Sec. 1741) (1941).

faced with an increasingly troublesome administrative problem as well as possible protracted and expensive litigation in relation to Section 10 of the Reconstruction Finance Corporation Act of January 22, 1932, c. 8, 47 Stat. 5, 9, as amended by Section 3 of the Act of June 10, 1941, c. 190, 55 Stat. 248 (15 U.S.C. 1946 ed., Sec. 610). Numerous other federal agencies individually will have similar problems. Collectively their problems will attain very substantial proportions.

Under these circumstances, it is desirable that the scope of paragraph 3 of Section 5219, Revised Statutes of the United States, be definitely determined by this Court. Only by such determination will a multiplicity of suits be avoided and the several federal agencies affected be afforded a guide for an orderly administrative practice with respect to state and local taxation of their real property.

This case presents, we think, an instance in which an assessor has applied a state rule so as to "effect a discrimination against the Government" and has applied the state rule in such a way as to make it "patently run counter to" the federal statute. *Reconstruction Finance Corp.* v. *Beaver County*, 328 U. S. 204, 210.

The principle of equal tax burdens resorted to by the court below in reaching its conclusion of nondiscrimination is wholly inconsistent with a practical or reasonable construction of paragraph 3 of Section 5219. It seems entirely unreasonable to assume that, in providing for state and local taxa-

tion of the real property of national banks, Congress consented to state and local taxation of *any* property of national banks which a local assessor, or state law, classifies as real estate, even if similar property of others is classified as personal property. When, for whatever reason, private property is classified as personalty, like national bank or federal property cannot, consistently with the statute, be made to bear the tax from which it would be free if it, like comparable private property, were classed as personalty.

In the enactment of paragraph 3 of Section 5219, Congress provided a clear, simple and satisfactory method for the submission of the real property of national banks to state and local taxation: (1) that the real property be such under the law of the taxing state (*Reconstruction Finance Corp.* v. *Beaver County, supra*), and (2) that it be taxed "to the same extent according to its value, as other real property is taxed." This obviously conditional Congressional consent to state and local taxation is unqualified and seems not to have been met by the assessments here in issue. That the end result of the assessments might have brought about an equality of tax burdens as determined by resort to tables, formulae, variable standards and oral and documentary evidence is not sufficient to bring the assessments within the scope of the Congressional consent. Congress provided no such complicated standard. It provided a single and simple rule that the real property of national banks could be taxed

"to the same extent, according to its value" by the states, and their subdivisions, "as other real property" in the state "is taxed." Congress did not contemplate or consent to taxation in such a case dependent on a complicated determination of an equality of tax burdens within one field of state taxation, or in another, or within both of such fields. The decision below, in reaching contrary results in the fields of local taxes and special assessment charges, demonstrates the variable, if not capricious, conclusions invited by adherence to the principle of tax equivalence adopted by the court below as basic.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

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